

February 4, 2000

Col. William C. Bernhjelm, Director  
Division of Enforcement  
Department of Natural Resources  
500 Lafayette Rd.  
St. Paul, MN 55155-4047

RE: In the Matter of the Appeal of the Trespass  
Citation Issued to Joseph John Jenniges  
OAH Docket No. 12-2000-12671-2

Dear Col. Bernhjelm:

A telephone conference was held in this matter on February 2, 2000. Participating in the conference with me were Mr. Jenniges and Conservation Officer Paul Kuske.

Officer Kuske had issued Mr. Jenniges a Notice of Trespass Violation and Civil Citation on December 8, 1999. The citation identified the location as the Dale Scholl property in Morrison County, stated that Mr. Jenniges had been involved in hunting grouse at that location, and explained the violation as, "Subject entered agriculture property without permission." Officer Kuske stated that his copy of the citation contains further notes that Mr. Jenniges had refused to leave Mr. Scholl's property after being told to leave and continued to hunt before leaving the property. Those notes do not appear on the citation issued to Mr. Jenniges or the copy provided to me by your office. Officer Kuske explained that the citation was actually issued for remaining on land for recreational purposes after being orally told not to do so by the owner, a violation of Minn. Stat. § 97B.001, subd. 3. Officer Kuske stated that whether Mr. Jenniges was on agricultural land was questionable.

From the descriptions of the incident given by Mr. Jenniges and Officer Kuske, it appears that Mr. Scholl has two farm fields with a wooded area between the fields. The wooded area is adjacent to the road, is about one-half mile wide, and it is not posted as required by Minn. Stat. § 97B.001, subd. 4. On December 8, 1999, Mr. Jenniges and two friends entered into the wooded area from the road, after noting that it was not posted. They were hunting grouse, and there were many present that day in the woods. Mr. Jenniges worked his way to the back of the property, which I believe Officer Kuske said was some

three-quarters of a mile from the road. At that point, Mr. Scholl drove up across one of the fields and approached Mr. Jenniges. Mr. Jenniges says he was still in the woods; it is not clear what Mr. Scholl would say. According to Mr. Jenniges, he told Mr. Scholl that he was not aware that he was hunting on private property (there was state property across the road), apologized, and offered to leave. However, Mr. Scholl told him to stay right there while he called authorities. Mr. Scholl called the sheriff and then Officer Kuske. During that conversation, Officer Kuske heard some angry exchanges between Mr. Scholl and Mr. Jenniges, advised them to go out to the road to meet him, and then drove to the Scholl property. Officer Kuske arrived at the property about ten minutes later. By that time, Mr. Scholl had driven out to the road and Mr. Jenniges' two friends were there, but Mr. Jenniges still had not reached the road. He did so a few minutes later. Mr. Scholl told Officer Kuske that he had heard gunshots as Mr. Jenniges was leaving the property. Mr. Jenniges admitted to Officer Kuske and during the telephone conference that he had fired one shot at a bird and missed while leaving the property.

In sum, it appears that Mr. Jenniges had not entered agricultural property without permission as stated in the citation. Nor had he entered on posted land as prohibited by statute, because the wooded area he was hunting was not posted. Nor had he violated the provision of the statute that prohibits remaining on land for recreational purposes after being told to leave by the owner for as long as the landowner told him to remain while he called the authorities. If a violation occurred, it was that he did some hunting while leaving the property. He admits to taking one shot, but apparently the landowner claims he heard several shots. He is sorry for any violation that occurred.

After some further discussion, Mr. Jenniges and Officer Kuske agreed to resolve the matter as follows:

- Mr. Jenniges will make a \$50.00 donation to Turn In Poachers. He will provide proof of that donation within 30 days by mailing a receipt or copy of the cancelled check to Officer Kuske at the address provided by Officer Kuske.
- Officer Kuske will then dismiss the citation.
- No hearing will be necessary.

Bernhjelm, Col. William C.  
2/4/00  
Page 3

This resolution appears to be reasonable. I am closing our file and returning the record to you.

Sincerely,

STEVE M. MIHALCHICK  
Administrative Law Judge

Telephone: 612/349-2544

SMM:cr

cc: Joseph Jenniges  
Conservation Officer Paul Kuske